

SB3797



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3797

Introduced 2/11/2010, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-1.3

from Ch. 38, par. 16-1.3

Amends the Criminal Code of 1961. Makes a technical change in a Section concerning financial exploitation of an elderly person or a person with a disability.

LRB096 20804 RLC 36564 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 16-1.3 as follows:

6 (720 ILCS 5/16-1.3) (from Ch. 38, par. 16-1.3)

7 Sec. 16-1.3. Financial exploitation of an elderly person or
8 a person with a disability.

9 (a) A person commits the ~~the~~ offense of financial
10 exploitation of an elderly person or a person with a disability
11 when he or she stands in a position of trust or confidence with
12 the elderly person or a person with a disability and he or she
13 knowingly and by deception or intimidation obtains control over
14 the property of an elderly person or a person with a disability
15 or illegally uses the assets or resources of an elderly person
16 or a person with a disability. The illegal use of the assets or
17 resources of an elderly person or a person with a disability
18 includes, but is not limited to, the misappropriation of those
19 assets or resources by undue influence, breach of a fiduciary
20 relationship, fraud, deception, extortion, or use of the assets
21 or resources contrary to law.

22 Financial exploitation of an elderly person or a person
23 with a disability is a Class 4 felony if the value of the

1 property is \$300 or less, a Class 3 felony if the value of the
2 property is more than \$300 but less than \$5,000, a Class 2
3 felony if the value of the property is \$5,000 or more but less
4 than \$100,000 and a Class 1 felony if the value of the property
5 is \$100,000 or more or if the elderly person is over 70 years
6 of age and the value of the property is \$15,000 or more or if
7 the elderly person is 80 years of age or older and the value of
8 the property is \$5,000 or more.

9 (b) For purposes of this Section:

10 (1) "Elderly person" means a person 60 years of age or
11 older.

12 (2) "Person with a disability" means a person who
13 suffers from a physical or mental impairment resulting from
14 disease, injury, functional disorder or congenital
15 condition that impairs the individual's mental or physical
16 ability to independently manage his or her property or
17 financial resources, or both.

18 (3) "Intimidation" means the communication to an
19 elderly person or a person with a disability that he or she
20 shall be deprived of food and nutrition, shelter,
21 prescribed medication or medical care and treatment.

22 (4) "Deception" means, in addition to its meaning as
23 defined in Section 15-4 of this Code, a misrepresentation
24 or concealment of material fact relating to the terms of a
25 contract or agreement entered into with the elderly person
26 or person with a disability or to the existing or

1 pre-existing condition of any of the property involved in
2 such contract or agreement; or the use or employment of any
3 misrepresentation, false pretense or false promise in
4 order to induce, encourage or solicit the elderly person or
5 person with a disability to enter into a contract or
6 agreement.

7 (c) For purposes of this Section, a person stands in a
8 position of trust and confidence with an elderly person or
9 person with a disability when he (1) is a parent, spouse, adult
10 child or other relative by blood or marriage of the elderly
11 person or person with a disability, (2) is a joint tenant or
12 tenant in common with the elderly person or person with a
13 disability, (3) has a legal or fiduciary relationship with the
14 elderly person or person with a disability, or (4) is a
15 financial planning or investment professional.

16 (d) Nothing in this Section shall be construed to limit the
17 remedies available to the victim under the Illinois Domestic
18 Violence Act of 1986.

19 (e) Nothing in this Section shall be construed to impose
20 criminal liability on a person who has made a good faith effort
21 to assist the elderly person or person with a disability in the
22 management of his or her property, but through no fault of his
23 or her own has been unable to provide such assistance.

24 (f) It shall not be a defense to financial exploitation of
25 an elderly person or person with a disability that the accused
26 reasonably believed that the victim was not an elderly person

1 or person with a disability.

2 (g) Civil Liability. A person who is charged by information
3 or indictment with the offense of financial exploitation of an
4 elderly person or person with a disability and who fails or
5 refuses to return the victim's property within 60 days
6 following a written demand from the victim or the victim's
7 legal representative shall be liable to the victim or to the
8 estate of the victim in damages of treble the amount of the
9 value of the property obtained, plus reasonable attorney fees
10 and court costs. The burden of proof that the defendant
11 unlawfully obtained the victim's property shall be by a
12 preponderance of the evidence. This subsection shall be
13 operative whether or not the defendant has been convicted of
14 the offense.

15 (Source: P.A. 95-798, eff. 1-1-09.)